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Public Engagement

ANTI-CORRUPTION IN AMERICAN HISTORY

Teachout, Zephyr, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United*. Cambridge: Harvard University Press, 2014.

Reviewed by Richard L. McCormick, Rutgers University
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What will it take to get Americans to do something about political corruption? I mean the deep corruption of politics and policy now caused by massive campaign contributions, by lobbyists who bundle those contributions for political candidates and then influence the policy decisions of elected officials, by the revolving door between public office and lucrative private employment, and—through all these instruments and more—by the influence of wealthy individuals and interests over the agencies and institutions of government. Some people say this is just American politics as usual: money is inevitable in public life, and anyway it's all perfectly legal. Sadly, those who say this are, at this moment, winning the argument. Writing for the Supreme Court majority in *Citizens United v. Federal Election Commission* (2010), Justice Anthony Kennedy opined, "It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness."[1] Cementing the case, says the Court, is the First Amendment, which protects political speech and political dollars.

Critics of the Court see in such "responsiveness" a fundamental threat to democracy. They deplore Kennedy's facile equation of casting a "vote" with making a "contribution" because likening them masks the far greater political influence exerted by campaign gifts from wealthy donors than by votes from ordinary people. Such critics abhor the sequence of Court decisions making it almost impossible to legislate reformation of the campaign finance system, and they lament the citizenry's seeming passivity in the face of deep corruption. The obstacles cited by the Court's detractors are arduous but not insurmountable. If Americans wanted to change the forms and practices of their political system, they could do so. They have changed it before. So what will it take, we may ask again, to get them to do something about political corruption?

There is no shortage of anti-corruption champions asking versions of that question today. They include journalists and pundits employing every conceivable medium and technology, scholars in many academic disciplines, university-based research centers, and myriad nonprofit organizations operating both on the ground and across the Internet.[2] Together these advocates have compiled vast amounts of information about contemporary corruption and have offered up countless proposals for curtailing it. Among the most notable recent anti-corruption tracts is *Republic, Lost: How Money Corrupts Congress—and A Plan to Stop It* by Lawrence Lessig, a professor of law at Harvard University whose compelling book is heavily informed by scholarly research but easily accessible to a

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Richard L. McCormick, email: rlm@rutgers.edu

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general audience.[3] Public opinion polls show that the American people's confidence in the federal government is at an all-time low and that they believe special interest groups and lobbyists have far too much influence in government. There is widespread support for rooting out bribery and extortion, for jailing the guilty, and sometimes for elevating to high office the prosecutors who nail them.[4] But there is little sign of a popular movement that would curtail deeper forms of corruption involving the systemic influence of money over public policy.

This situation should be familiar to students of history. Engaged citizens of nearly every generation have struggled to try to get Americans to pay attention to corruption. From the pamphleteers of the American Revolution to the muckrakers of the Progressive Era to the contemporary followers of Common Cause, avowed opponents of corruption have done their best to arouse people against it and to win the citizenry's support for changing the rules of politics and, occasionally, even for altering its fundamental character. Sometimes the enemies of corruption succeeded, but more commonly they failed to keep pace with the onslaught of concentrated wealth. Their efforts to curtail corruption were almost always entangled with other political motivations, often, indeed, with multiple and competing motivations, not all of which look very attractive today. Anyone who tries to write a history of anti-corruption movements in America will find hundreds, if not thousands, of existing studies to draw upon—but will face a daunting challenge to make sense of the whole.

At this juncture comes another law professor, Zephyr Teachout of Fordham University, bravely trying to do just that: to make sense of the whole history of American opposition to political corruption. Teachout's *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United* traces the record of constitutional and legal efforts to curtail corruption and, based on that evidence, directly challenges the narrow definition of corruption upon which the Supreme Court has rested its most recent campaign finance decisions. Lawrence Lessig has dubbed her book a "letter to the Supreme Court."[5] From the eighteenth century onward, Teachout shows, American law embraced "a particularly demanding notion of corruption" that persisted, strikingly intact, from the Revolutionary Era until recent decades when it has been shrunk and weakened by Court decisions starting with *Buckley v. Valeo* (1976).[6] While there is no guarantee the justices will read her "letter," Teachout's findings seem likely to seep into public consciousness in the way the best original scholarship sometimes does. Her pathbreaking book may even aid in answering the question: "What will it take?"

* * *

Early Americans construed corruption expansively—and elusively. Embracing far more than quid pro quo exchanges (such as the explicit swap of a bribe for a governmental action), corruption, says Teachout, also connoted "inappropriate attachments and dependencies," including all manner of ingenious relationships and affinities spanning the public and private spheres. Her first example, reflected in her book's subtitle, is the diamond snuff box that King Louis XVI gave personally to Benjamin Franklin in 1785, at the conclusion of his many years of service as the American minister to France. Rejecting the corruption of the old world, whose political culture mixed formal public duty with suspicious human habits such as friendship, seduction, luxury, and dependency, Franklin's newly independent countrymen worried that accepting such gifts might encourage the recipient's "subtle sympathies" to the gift giver, who was in this case the sovereign of a foreign country.[7] Accordingly, a clause in the Articles of Confederation (later emulated in the Constitution) obliged Franklin to obtain congressional approval to keep the snuff box (which he got). Other Americans of the age, including Silas Deane, Arthur Lee, and Thomas Jefferson, had snuff-box problems of their own arising from their foreign service.

Quaint though it may sound to our modern ears, this issue was vital to members of the revolutionary and constitutional generation because they were resolved to create a republic whose government was, in James Madison's words, "as uncorrupt as possible"—a republic whose public officers used public goods for public purposes, not "for their own enrichment or advancement."[8]

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That was the ideal that late eighteenth-century Americans had gleaned from many sources: from histories of the decline of republican Rome, from revered political philosophers, and from their observations of corrupt old Europe. They knew that establishing and maintaining a government "as uncorrupt as possible" would be very difficult, not only because human nature tends toward greediness, but also because *corruption* is so terribly complicated and maddeningly imprecise. Teachout recognizes and unravels that complexity, traces the history of corruption in American law (which renders it more complex still), and yet insists upon both the reality of corruption and the essentiality of anti-corruption to democracy.

"Like liberty, speech, or equality," Teachout writes, "corruption is an important concept with unclear boundaries." It has a distinctly moral dimension, revealing its Christian and Lockian origins and connoting behavior that is sinful. Corruption has psychological content, too, reflecting the influences of Aristotle and Montesquieu and indicating a person's orientation to his own private advantage rather than to the public good. "In both traditions," Teachout writes, "the core metaphor of corruption was organic and derived from disease and internal collapse."[9] Applied to political arrangements, it meant the rotting and degeneracy of civic virtue and public integrity. Corruption can also be rooted in a person's dependency, either financial or mental or both, which disposes the vulnerable individual to act in accordance with the wishes of those who are more powerful.[10]

For all the complexity of its origins and meanings, says Teachout, corruption was terribly real to the men who became the authors of the Constitution in the summer of 1787. Surveying the chaos and seeming corruption of the governments of independent America, they made corruption "part of the[ir] grammar." As they set to work, George Mason warned the other delegates to the Constitutional Convention, "If we do not provide against corruption, our government will soon be at an end." James Madison scribbled the word fifty-four times in his notebook that summer, while Alexander Hamilton, later recounting the motivations of the Founders, observed that "Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption."[11]

Some careful readers of Teachout's scholarship, both the book under review and an earlier, much-cited article entitled "The Anti-Corruption Principle," have suggested that she exaggerates the Founders' worrying about corruption. Certainly she emphasizes their anxiety: The authors of the Constitution, Teachout says, "all shared a general obsession with corruption." Her critics' point matters because the relevance of Teachout's book to the "originalists" on today's Supreme Court would be diminished if it were true that the authors of the Constitution had rather less concern about corruption, and a less expansive conception of it, than she says they did.[12] Constitutional scholars will continue to argue about the Founders' motivations, but there is no doubt that the Constitution includes numerous provisions designed to forestall corruption, although many of these provisions had other origins and purposes as well. (An appendix in Teachout's book lists twenty-three "Anticorruption Constitutional Provisions.") They include, to name a few, the foreign-gifts clause noted earlier, the prohibition against members of Congress holding appointive offices in the U.S. government, the provisions ensuring that the House of Representatives would be a large body and that its members would reside within their respective states, and the rules governing how the Electoral College should choose the president of the United States.[13]

Recognizing the inevitability of corruption, but still wanting to constrain it, the Founders had placed their faith in *rules* as well as in *culture*, in constitutional provisions to discourage bad behavior as well as in a republican citizenry's devotion to the common good. "[H]ow," they asked, "could they create a system that would be most likely to be filled with men of civic virtue but avoid creating temptations that might corrode that virtue?"[14] Although corruption's boundaries were imprecise, the answer at which they arrived, ironic though it may seem, lay in enacting the many, precise anti-corruption provisions in the Constitution ("bright-line rules," Teachout calls them). The Founders never expected those rules to completely define or deter corruption; their goal was more modest: a government "as uncorrupt as possible." Through many generations to come, in law

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and in public life, Americans retained the Founders' expansive and demanding opposition to corruption, but they found it difficult to agree on how to define it, or prevent it, or punish it. Teachout conveys that history through carefully chosen state and federal court cases that exhibit "powerful competing ideas about corruption," ideas she holds to be directly relevant to the gravest challenge our democracy is facing today.[15]

It's a fascinating story, some parts of which have been told before, but never within a narrative spanning more than two centuries. Although corruption was practiced in every era by greater or lesser numbers of faithless public officials, was constantly reviled and opposed by their enemies, and was forever before the courts in some manner, the legal penalties actually meted out for corruption varied considerably over time. (Greater, though scarcely dependable, punishments often came through the rough and tumble of politics.) Teachout proceeds chronologically, but the tale she tells takes unexpected twists and turns, and the details shift significantly from one era to the next. Her sensitive handling of this variability enables her to make the case that legislators and judges tried to preserve the Founders' exacting and entangled understanding of corruption until quite recently, but to her credit she unearths enough variation, even confusion, to suggest the possibility that other scholars may turn to this same material to make a contrary argument emphasizing discontinuity and inconsistency.

The first great corruption case to reach the Supreme Court was Yazoo, named for a vast tract of land in what is now Mississippi and Alabama. In 1795, a band of speculators bribed the legislature of Georgia (which claimed the tract) to sell them thirty-five million acres of Yazoo at a scandalously low price. The corrupt deal was quickly uncovered, every Georgia legislator who had voted for it was thrown out of office, and the next legislature voided the transaction. Some of the spurned purchasers then sued to regain the land, and, for the next decade and a half, the case careened through national as well as state politics and through the courts. Just as they would do forever after, judges and politicians struggled with the concept of corruption. Was the original land sale invalid because it had been obtained by bribery? Or were the purchasers entitled to "stable property rights" regardless of the legislators' motivation? Even before the Supreme Court rendered its seminal decision in *Fletcher v. Peck* (1810), the Yazoo scandal had exposed the still-valid truth that, as Teachout observes, "it is easier to identify corruption as a political incident than make sense of it legally." Writing for a unanimous Court, Chief Justice John Marshall rejected the Georgia's legislature's repeal of the original land sale on the grounds that commerce depended upon the security of contracts, and he expressed doubt that courts were competent to invalidate a law "based on 'the impure motives'" that had influenced its passage. Marshall avowed his regret that "corruption should find its way into the governments of our infant republics," but he concluded, in Teachout's words, "that nothing can be done about it." In so deciding, she writes, the chief justice foreshadowed the "corruption nihilism" of today's courts. Certainly the Yazoo story illustrates the complexity of dealing legally with corruption; less clear is how strongly it supports Teachout's claim of a consistent conception of corruption from the Founding era until nearly our own.[16]

Marshall's ruling in *Fletcher* announced that it would be difficult, if not impossible, to reverse corruptly made policy decisions but did not deter the federal and state governments from enacting laws against bribery and lobbying. The earliest anti-bribery statutes applied to judges, but by the 1820s, states were criminalizing the bribery of legislators and other officials, and in 1853, Congress outlawed bribery of any officer of the United States. Over time, state statutes became "capacious" and "sprawling," writes Teachout, and embraced far more than just selling favors: "Officials were guilty if they were found to be partial or to treat one side more favorably, and bribers were guilty for trying to influence anything, even judgment." When bribery cases reached the courts, however, nineteenth-century judges struggled to decide what evidence was required to prove illegality; whether corrupt intent was intrinsic to the crime; and, if so, how to establish motivation. Judicial opinions in corruption cases were thus "long, overwrought, and anguished," but they produced few convictions. Tammany "Boss" William Tweed and the Grant administration's Whiskey Ring

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rascals were the prominent exceptions. Even in the celebrated Crédit Moblier scandal, though congressmen were known to have been bribed, none were convicted.[17]

Anti-lobbying laws, too, reveal the strength of nineteenth-century hostility toward political corruption. In the mid-1800s, both the states and the nation outlawed the selling of influence for reasons the Founders would have understood: Lobbying was a "civic wrong" undermining virtue, it was "corrupt in its nature and against public policy," and it threatened even the integrity of the lobbyist by affording him pay for expressing opinions he did not really hold. Courts were frequently called upon to decide "whether or not to enforce contracts for 'lobbying' services," and they commonly declared such contracts invalid. Then, over time, says Teachout, these lobbying cases "were gradually shunted aside." The courts struck down fewer and fewer lobbying contracts, and lobbying progressively became the subject of regulation rather than prohibition. In their breadth and abundance, the nineteenth-century laws of corruption support the basic argument of Teachout's book, but more research is needed on bribery and lobbying—on the nature of the corrupt behavior itself, on the political origins of the laws against it, and on the resulting judicial struggles over what corruption meant and how to punish it.[18]

The pivot of Teachout's book, though understated, is the Progressive Era, and her protagonist is President Theodore Roosevelt. She credits him and his administration with two significant anti-corruption achievements: first, successfully prosecuting corrupt government officials, thus bringing an end to the long era during which the criminal laws against bribery were dead letters; and second, enacting campaign finance legislation, namely the 1907 Tillman Act, which prohibited corporate campaign contributions and opened the door to subsequent laws regulating money in elections. "[F]or most of the twentieth century," she writes, "the country lived inside of Teddy Roosevelt's vision of bright lines and broad enforcement." "In case after case," when officials were charged with bribery, "the courts reinforced the classic American view of corruption and political obligation of public servants." In the area of money in elections, too, Teachout declares: "For nearly seventy years after Roosevelt left office [in 1909], courts upheld his general approach toward campaign finance rules."[19]

Teachout is surely correct to identify the Roosevelt years as a turning point in the history of anti-corruption, and it is not difficult to share her admiration for progressive political reforms (at least the ones discussed in this book). But as the final third of *Corruption in America* attests, there has been a lot of slippage in recent decades, especially in regard to money in elections. Perennially plagued by lax enforcement, campaign finance laws have now also fallen victim to First Amendment challenges and, most recently, to Supreme Court decisions asserting a far more restricted definition of corruption than Americans have known throughout history. As Teachout makes her way through the tortuous legal and judicial thickets toward *Citizens United* (2010), she regretfully reveals what the modern Court has done to the concept of corruption.

The turning point came in *Buckley v. Valeo* (1976), in which the Court ruled on the constitutionality of the strict campaign finance regulations that Congress had enacted two years earlier in the aftermath of Watergate. The Court upheld most of the law's provisions—including the limits on campaign contributions, the requirements for disclosure, and the system of publicly funded presidential elections—but struck down the campaign expenditure limitations on the grounds that they infringed First Amendment free speech rights. According to the justices' reasoning in *Buckley*, campaign *contributions* could be corrupting and thus warranted legislative regulation, but not so campaign *expenditures*, which were unlikely to corrupt the democratic process and thus could not be limited by law. The Court's distinction between contributions and expenditures was immediately controversial and has never been fully accepted, either by liberals (who want the Court to sustain the limits on spending) or by conservatives (who want the Court to nullify the limits on contributions). In declaring that campaign contributions could be corrupting, the Court proclaimed the government's interest in combatting corruption but left unexplained exactly what corruption was or how to recognize it. From that moment forward, says Teachout, "every state or federal law

involving a regulation of money and politics became suspect and open to challenge."[20] Court decisions following *Buckley* confirmed that the First Amendment protects the use of money in politics—except when that money is used for *corruption*, whatever that might be.

At last, in 2010, the Supreme Court did what it had never done before: It precisely, and narrowly, defined corruption. Corruption meant quid pro quo. No matter whether a campaign gift is given by a person, a business corporation, or a labor union, that gift is corrupt only if it is exchanged for a particular governmental act. So said Justice Kennedy, writing for the Court, in *Citizens United*. Nothing except corruption or the appearance of corruption could justify infringing free speech, and corruption "exists only where there are 'direct examples of votes being exchanged for … expenditures.'" Kennedy's concept of corruption does not include influence, access, ingratiation, or favoritism; it does not include, in other words, the whole array of alarming, dubious, and dangerous political practices against which Americans have inveighed since the time of the Revolution. In *Citizens United*, writes Teachout, the Court "took that which had been named corrupt for over two hundred years and renamed it legitimate and the essence of responsiveness." In the Court's view, individuals and corporations "are supposed to use money to achieve personal benefits in the public sphere." Such practices are inevitable and unproblematic. For Kennedy and the Court, Teachout says, "The vast range of inappropriate dependencies and self-serving behavior that made up the web of the world of corruption for the founders is gone. … The corruption against which the framers said they must provide, lest 'our government will soon be at an end'—that is not a value anymore."[21] Writing for the Court several years later in *McCutcheon v. FEC* (2014), Chief Justice John Roberts agreed: corruption means quid pro quo.[22]

Today we have a political system in which legislators spend roughly half their time raising money for the next election, acquire obligations to generous donors whose policy preferences they then privilege, and, when their terms in office are finished, secure well-paid positions lobbying their former fellow legislators. All of this is legal because it's not quid pro quo. Even if Congress had the will to curtail this corruption—and there is no indication of such will at the present time—the current Supreme Court would not permit it.[23]

Teachout's bold contention is that the Court reached its fateful campaign finance decisions only by neglecting America's abundant, centuries-long history of constitutional and law-based opposition to corruption. She has assembled plenty of evidence on which to base her argument, including well over a hundred federal and state court cases, stretching from the eighteenth century to the present day, and many, many dozens of laws. Teachout has opened up the long history of anti-corruption in American law, and other scholars are sure to plunge into it—and sure to raise questions.

Corruption in America has a bit of an episodic quality, and the reader is not always sure why the narrative moves from one subject to another. By following Teachout's lead and by extending her already expansive investigation of laws and court cases, other scholars may uncover greater variability and less continuity in conceptions of corruption than she has recognized. Perhaps the greatest difficulty with the evidence is one that Teachout herself repeatedly observes: There were wide gaps between how Americans understood corruption and what they actually did about it. It was easier to decry it than define it, easier to spot it than punish it in law, easier to vote someone out of office than put him in jail or rescind a corruptly passed statute for which he had voted. Teachout has not failed to notice these gaps; indeed, they are intrinsic to her story. But they raise questions about what exactly it is that today's Supreme Court has failed to appreciate and about whether deeper familiarity with the history of anti-corruption law would change the minds of future justices.

Teachout's utterly convincing response, which she articulates in her final chapters, is to reposition her argument's frame and focus—away from the inevitably inconsistent details of time- and place-dependent case law and back toward the fundamental ideas of corruption, to which Americans have been remarkably loyal over the centuries. Within every generation, corruption has aroused revulsion and has inspired efforts to constrain broad and sometimes subtle systems of bad behavior by punishing those who engage in it. Teachout is a scholar of that long tradition,

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and she is also proudly imbued with it. "I am trying to bring corruption back," she writes, "as an idea, something we fight and worry about" and as a concept with intricate but enduring meaning. "People are corrupt," she says, "when their private interest systematically overrides public good in public roles, when they put their self-love ahead of group love."[24] Corruption requires human motivation and does not happen accidently. Corruption includes activities that, although formally legal, may shift an officeholder's loyalty from his rightful constituents to someone or something upon which he has become dependent.

In her pursuit of so elevated an understanding of corruption, so different from mere quid pro quo, Teachout advances without hesitation onto the learned turf of political and legal theorists who have interpreted corruption across millennia. Among contemporary scholars, she aligns herself with Laura Underkuffler, Lawrence Lessig, Samuel Issachharoff, and Deborah Hellman, all of whom recognize the complexity and elusiveness of corruption but insist upon its reality, embrace its "grammar," and treat it "as a concept worthy of its own meaning."[25] Drawing strength from these intellectual allies but proceeding confidently on the basis of her own research, and passion, Teachout insists that democracy requires a conception of corruption, despite all its dilemmas and definitional difficulties, and that Americans must continue to embrace that conception. So, she says, should their courts. Although corruption "may be a disputed concept at the margins," an unwavering commitment to the anti-corruption principle is essential to law in a democratic land. "[W]ithout constant vigilance against corruption," democracy is "unstable" and "unmoored."[26] Teachout's formulation is brave and, to this reader, persuasive, but it is surely exacting. Neither in scholarship nor in life is anti-corruption for the faint of heart.

* * *

Almost in passing, Teachout rightly observes that for much of American history the problem of corruption pervaded politics as well as law. It influenced political decisions, leading political actors, and major political events. The "grammar" of corruption, she says, was essential not only to the Founders but also to the Jacksonians, the Populists, the Progressives, and to "the rise of prosecutorial post-Watergate culture."[27] Although little noticed in Teachout's book, every anti-corruption statute she cites arose inevitably from the political process, and many, if not most, judicial decisions, including those of the Supreme Court, were shaped by political trends. Across the centuries, the anti-corruption principle has been just as potent, and sometimes just as impotent, in politics as in law.

Chances are it will take more than a "letter"—even a letter as well informed and passionate as Teachout's—to persuade the Court to expand its current, narrow definition of corruption. Judging from history, it will require a mighty political movement elevating to positions of power talented leaders who are intent upon enacting anti-corruption laws and, perhaps, constitutional amendments. That hypothetical movement is almost sure to be beset by ironies, inconsistencies, and internal contradictions, while the laws it generates are nearly certain to bring consequences that their authors did not intend or, at least, did not avow. The leaders of that movement would thus be well advised not only to be strong of heart, but also to learn all they can from the historical successes and failures of anti-corruption politics.

Vigorous opposition to corruption, both real and alleged, has been commonplace in every era. Eighteenth-century political leaders, generally situated in the popularly elected lower houses of the assemblies of their respective colonies, frequently assailed the depravity of British officials, especially the avarice of the royal governors. As Benjamin Franklin explained the situation to a London audience in 1768, the governors "come [to America] only to make money as fast as they can; are sometimes men of vicious characters and broken fortunes … [and] are apt to be regardless of the good will of the people."[28] In the early 1820s, cabinet members competing for the presidency exploited popular fears that American virtue was in decline by investigating and assailing the supposed corruption within each other's administrative departments.[29] Following the creation of

mass political parties in the 1830s, accusations of legislative bribery, spoils and patronage, and electoral fraud became permanent features of the landscape, hurled alike by major party politicians and by men outside the mainstream, such as Anti-Masons, Know-Nothings, and mugwumps, all seeking to discredit their enemies.[30] Many of the charges of corruption were true, others were conjured up for political advantage, and about still others we will never know. From the 1850s onward, elite urban reformers condemned corrupt city bosses with their immigrant-backed machines; agrarian Populists of the 1890s assailed the corruption dominating "the ballot-box, the Legislatures, the Congress, and … even the ermine of the bench;" and, for most of the twentieth century, Progressives from Robert LaFollette to Ralph Nader decried the corrupting influence of big business upon government.[31]

Looking back, much of the corruption against which Americans railed seems humdrum, politics as usual, a kind of historical mirror for the contemporary refrain that "they all do it." Within every generation, some individuals rose to positions of power by assailing corruption, and every era brought forth at least a few good ideas that reformers of a later day would enact. But in the moment, anti-corruption movements mainly struggled and faltered, while their infrequent ascendancies took decades to evolve. "[T]hen rather suddenly," Walter Lippmann astutely observed in 1930, "there will come a period when every act of the administration in power is suspect, when every agency of investigation is prodded into activity, and the civic conscience begins to boil."[32] At such moments, when anti-corruption is at a peak, the political evils seem far more dangerous than before and, what's worse, appear yoked to acute social and economic problems. These are the times when anti-corruption triumphs—always in concert with other motivations of the day—and the political and governmental transformations to which it contributes are momentous.

To revolutionaries of the 1770s, the corrupt conspiracy of king and Parliament to deprive Americans of their liberties seemed far more alarming than the familiar, petty greediness of royal governors. For nearly half a century, colonial elites had been conversant with the warnings of English opposition writers who decried the encroachments of power upon liberty, but only within the cauldron of aggressive new imperial policies affecting trade and taxation did leaders of the Revolution take up the cry against *corruption*. Together with *liberty* and *independence*, that notion proved vital to provoking the war and the world-historic governmental and social changes that followed. Corruption and its opposite, *virtue*, became central to the republican language of the new republic—available to, and, in fact, obligatory upon, many subsequent generations of political leaders.[33]

Those same concepts critically assisted Americans in coming to terms with economic and political changes during the first decades of the nineteenth century. While his rivals for the presidency were trumping up mundane accusations against each other's cabinet departments, the Old Hero Andrew Jackson donned the mantle of the incorruptible George Washington. With virtue "on the wane," republican principles "fast declining," and Jackson's competitors practicing "artifice, corruption and intrigue," his ardent champions asked the nation, "[W]here amongst them is there a republican like ANDREW JACKSON?" Following the election of 1824, Jackson alleged that a "corrupt bargain" had kept him from the White House, and after winning the presidency four years later, he pursued his charges of corruption against "monsters" such as the Second Bank of the United States whose power and privilege denied opportunity to ordinary farmers and laborers. Jackson and his followers established the world's first mass political party, the Democrats, and enacted a generation's worth of public policies shaping finance, corporate charters, economic development, and public lands by drawing strength from the cry of corruption. Coalescing as *Whigs*, a name that evoked principled opposition to corrupt executive power, Jackson's opponents crafted their own, competing array of grievances against what they called corruption.[34] For the rest of the century, politicians of all persuasions exploited the loathings for corruption that had helped to inspire the unprecedented political transformations of the Jackson period.

By the 1850s, allegations of political-party corruption had reached scandalous proportions and become deeply entwined with the sectional issues of slavery and race. Northerners who were

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opposed to the expansion of slavery shrilly denounced the slave power conspiracy's corrupt control of the national government, while southern firebrands vented mirror-image condemnations of the industrializing North's surging economic and political power. Those on both sides evoked hatred of corruption to unify their region against the other. Less than a generation later, white politicians in both major parties promoted sectional reconciliation by conveniently agreeing that black Reconstruction governments in the South had disgraced themselves through massive bribery and malfeasance.[35]

Although Gilded Age Americans recognized and complained about the corruption of their politics, with some notable exceptions such as the beginnings of civil service reform and the adoption of the blanket, Australian ballot, they were unable to do much about it. But their complaints piled up, mixed in with all kinds of social and economic grievances indicating deep and diverse dissatisfactions with the consequences of industrialization and urbanization. Early in the 1900s, the flash point arrived. Dozens of local and state political crises suddenly laid bare the shocking, systematic corruption of government by railroads and other business corporations and led, within a short span of years, to the adoption of laws designed to curtail virtually every form of corruption that had flourished in the nineteenth century.[36] These scandals, together with an accompanying outcry from muckraking journalists, helped to dramatize not only the degradation of politics but also the culpability of the same corrupt actors—party politicians and business corporations—for egregious, unsolved social and economic problems. A rare generation of progressive reformers thus gained the opportunity to launch new programs of economic regulation and social welfare and, along the way, to elevate the influence within government of interest groups, experts, and administrators.[37] This was the political context in which Theodore Roosevelt enacted the anti-corruption measures for which Teachout justly credits him.

So for the fourth time in American history, anti-corruption, entwined with the most compelling public issues of the day, helped to propel transformative and enduring changes in politics and government. This happened first during the Revolutionary Era, when the United States gained independence and established republican governments. It happened again during the Jackson period, when Americans invented popular party politics. It happened for a third time during the Civil War and Reconstruction, when slavery was abolished and race relations were set upon a wretched course bound to persist for nearly a century. And it happened for the fourth time in the Progressive Era, when Americans reformed politics and government to meet the challenges of an industrial society. Never again has opposition to corruption driven such momentous changes in politics and government.

The Progressive Era, indeed, marked a pronounced turning point in America's history of corruption and anti-corruption. Drawing creatively upon proposed remedies that had been accumulating since the 1870s, early twentieth-century reformers enacted measures responding to practically every complaint lodged against the political-party system of the previous century. Central to the Progressives' approach was a modern conviction—expressed by muckraking journalists, above all, by Lincoln Steffens—that corruption was caused fundamentally not by bad men but by the formerly secretive, now widely exposed, systemic alliance of party politicians and privilege-seeking businesses.[38] From this perspective, corruption could be greatly reduced, though probably not entirely eliminated, through the passage of carefully crafted laws improving the electoral and appointive processes and regulating the relationships between business and government at every level. The "bad" men who remained could be prosecuted for identifiable crimes such as bribery, and the political system overall would become far less corrupt.

Influential as it was, the impulse to frustrate corruption scarcely formed the whole of progressivism. Other motivations, such as ameliorating the ills of industrialism, making cities more livable, and bringing social scientific wisdom to government, competed for primacy among reformers. Frequently, in fact, their agendas conflicted, and sometimes they formed ungainly partnerships in pursuit of their goals. Mixed in, as often it was, with competing social and economic aims, the

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anti-corruption thread of progressivism contributed to some outcomes that appear deeply regrettable today: most notably the disenfranchisement of black citizens.[39]

For all their limitations, progressive reforms curtailed the worst abuses of nineteenth-century party politics, and, as Teachout shows, bribery came to be punished more consistently than ever before. Predictably, however, new techniques of political corruption emerged, and soon enough wealthy interests developed modernized methods for influencing government, including large campaign contributions, the secretive capture of regulatory agencies, and the revolving door. More alarmingly still, twentieth- (and early twenty-first-) century Americans showed (and still show) far less passion than their forebears did for exposing, and at least *trying* to punish, forms of corruption that are subtler and deeper than bribery.

Several developments help explain why twentieth-century Americans grew disinclined to resist the more intricate forms of corruption emanating from influence and dependence. The Progressives had confidently created rules and agencies to root out visibly corrupt practices, and, while the degree of enforcement varied across time and place, an increasing number of public officials who accepted or extorted bribes were put out of office and into jail. Such prosecutions suggested that government had corruption under control, while paradoxically the prevalence of these cases fueled the perception that politicians "all do it." But whether corruption was perceived to be *effectively contained* or *practically ubiquitous*, the felt impact on politics was the same: It didn't pay for ordinary Americans to worry much about corruption. Besides, most of the stuff that prosecutors uncovered was, and is, boring and banal.

Even if people did spend considerable time worrying about corruption, it would not matter very much because government has grown so large and complicated that it is difficult to know what's going on inside. The technical minutia of regulatory policy and the arcane laws and judicial decisions regulating campaign contributions, to take two relevant examples, are almost impossible for most people to understand. And in any case, with government so big, corruption arguably must be needed to get important things done. Furthermore, even a casual consumer of worldwide news knows that many other nations are far more politically corrupt than the United States, so from an international vantage point we look pretty respectable.

Above all, corruption no longer seems to be connected to the most serious economic and social problems confronting the nation. If there *are* such connections, political leaders have not been making them. In sharp contrast to earlier eras, none of the twentieth-century's great political movements or governmental transformations drew significantly upon the language of corruption—not the New Deal, the Civil Rights movement, the Great Society, or the Reagan Revolution. Instead of appearing to be vitally linked to issues that mattered, corruption would flare up in scandal, make headlines for a while, and then go away, leaving little trace on the political system. Think of Teapot Dome, the Truman scandals, Iran-Contra, and many more. Twentieth-century Americans may have tolerated so much corruption because it never felt all that important to stop it. Corruption was not perceived to cause truly bad policy outcomes or to prevent solutions to the nation's most urgent problems.

Watergate stands out as the twentieth-century's most grievous episode of corruption, and this crisis affected politics more than any other. President Richard Nixon was forced to resign, over two dozen members of his administration went to jail, and his party lost the next several elections. Congress passed a plethora of laws in the name of preventing future abuses of presidential power, and, perhaps most important, the American people's confidence in government, already in decline, deteriorated still further. It is far beyond the scope of this article to assess the long-term impacts of Watergate, but as several distinguished law professors predicted at the time, the Nixon administration's abuses offered "a 'poor vehicle' for addressing major reforms." Watergate did not reverse the steady growth of presidential power over either domestic or foreign affairs; it did not basically alter the federal agencies that had come under severest suspicion: the FBI, the CIA, and the IRS; and it did not lead to the curtailment of special-interest money in elections (maybe even the reverse).

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Watergate remains a byword in American politics and "has lingered in public memory."[40] Less clear, however, is whether that sharply etched political agony enduringly transformed politics and government.

* * *

The prevailing inattention to deep corruption shown by Americans since the Progressive Era suggests two rather different possibilities for future politics. One is that the corruption paradigm ran its course a long time ago and is no longer capable of inspiring significant political changes. In this scenario, prosecutions for bribery will likely continue, but we will just have to accept a political universe in which campaign money legally buys access and influence for wealthy individuals and interests. From this perspective, *Citizens United* and *McCutcheon* make complete sense: In setting forth its narrow, quid pro quo definition of corruption, the Supreme Court has simply ratified a reality that was already almost a century old by the time those decisions were delivered. Writing in *The New Yorker* about Teachout's ambition to "bring corruption back," historian Jill Lepore labels it "an odd strategy." "It might not be the right fight to pick," she says. "[A]ttempting to eliminate corruption is like trying to stamp out sin."[41] Such an approach just won't work anymore.

The passage of time may well prove the correctness of this pessimistic scenario, but history indicates there is another pathway. Unique though they were, the four fateful eras when anti-corruption fervor helped to bring about major political changes shared some common characteristics. In each, a popular conviction emerged that vitally important matters had gone very wrong in America, often through the influence of wealth and privilege; and that political corruption was causing, or at least worsening, the problems by sheltering wrongdoers and blocking solutions. Each of these eras was also characterized by crises that exposed political misconduct; by a growing recognition that long-accepted political and governmental practices were actually corrupt; and by the availability of proposed remedies for the perceived misfortunes, remedies that may have originated with highbrow thinkers but were now advanced into public consciousness through the efforts of popular communicators and politicians.

Most important, at each of these critical junctures, strong leaders connected the dots between the most alarming public issues of the day and *corruption*. They explained how greedy men and interests were exploiting their political influence to cause the problems and prevent solutions. They drew creatively upon remedies that were already in the air, and fashioned new ones in the heat of the moment, all designed concurrently to address the nation's gravest difficulties and cure the corruption. Inevitably these leaders formed alliances and made compromises that complicated their programs, sullied their high-minded objectives with selfish motivations, and helped to bring about results more impure than their loftiest rhetoric might have suggested. At least once—when Reconstruction was brought to an end on the grounds of its corruption—the results were tragic.

Conditions today invite bold leaders to step forward and say that the political influence of monied men and organizations, fueled by their lobbying and campaign giving, is preventing the enactment of effective responses to the most serious problems confronting our country (and the world). These include global climate change, about which our government has done practically nothing; the lax regulation of industries such as banking and energy, with damaging consequences for the economy and the environment; and the dreadful ineffectiveness of our urban school systems.[42] Brave and imaginative political leaders should set forth appeals and proposals interweaving these social and economic issues with arguments against *corruption*, thus enabling each to draw strength from the other. Exactly what mix of issues and appeals would work best is beyond my power to imagine—but it is instructive to recall the strenuous but popular criticisms that were raised up against king and Parliament, against specially privileged economic interests, against the slave power conspiracy, and against the trusts.

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Readers may recoil from some of these comparisons, and surely I am not proposing to go to war. But I am suggesting from the vantage point of political history, just as Teachout has proposed from the perspective of legal history, that it is time to return to a conversation about *corruption*. There is no more evocative word in the democratic lexicon, not even *liberty*, and the frank use of it can once again provide passion and direction for addressing ills that currently seem incurable. The perils of this approach are as evident from history as are the advantages. Opposition to corruption will lead in unforeseen directions and may bring unintended, unwanted results. But the alternative is even more dangerous: the lasting inability of a corrupted political system to solve the people's most important problems. We can thank Zephyr Teachout for a compelling historical account bringing corruption back. Both the Founders and the Progressives would be proud.

NOTES

[1]Kennedy quoted in Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United* (Cambridge: Harvard University Press, 2014), 233.

[2]Outstanding examples include Larry J. Sabato and Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (New York: Times Books, 1996); Elizabeth Drew, *The Corruption of American Politics: What Went Wrong and Why* (Secaucus, NJ: Birch Lane Press, 1999); Martin Tolchin and Susan J. Tolchin, *Pinstripe Patronage: Political Favoritism from the Clubhouse to the White House and Beyond* (Boulder: Paradigm Publishers, 2011); Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (New York: Russell Sage Foundation, 2012); Lynda W. Powell, *The Influence of Campaign Contributions in State Legislatures: The Effects of Institutions and Politics* (Ann Arbor: University of Michigan Press, 2012); Timothy K. Kuhner, *Capitalism v. Democracy: Money in Politics and the Free Market Constitution* (Stanford: Stanford University Press, 2014); The Brennan Center for Justice at New York University School of Law; The Edmond J. Safra Center for Ethics at Harvard University; The Center for the Advancement of Public Integrity at Columbia Law School; The Center for Responsive Politics; The Center for Public Integrity; Transparency International: The Global Coalition Against Corruption; and Common Cause.

[3]Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (New York: Hatchett Book Group, 2011).

[4]Many organizations regularly poll citizens about their attitudes toward corruption and publish the findings online; these include, among others, Gallup, Rasmussen Reports, Democracy Corps, and the Pew Research Center.

[5]Lessig characterized Teachout's book in that way during the course of a panel discussion in which they both participated; "Curbing Corruption," New America NYC, December 9, 2014.

[6]Teachout, *Corruption in America*, 2.

[7]Teachout, *Corruption in America*, 2, 3.

[8]Teachout, *Corruption in America*, 14, 48.

[9]Teachout, *Corruption in America*, 9, 39.

[10]On dependency and corruption, see Teachout, *Corruption in America*, 53–55; and Lessig, *Republic, Lost*, 15–20, 230–46.

[11]Teachout, *Corruption in America*, 5, 38, 57.

[12]The phrase "all shared a general obsession with corruption" appears in Zephyr Teachout, "The Anti-Corruption Principle," *Cornell Law Review* 94 (2009): 347. For challenges to her perspective, see Seth Barrett Tillman, "*Citizens United* and the Scope of Professor Teachout's Anti-Corruption Principle," *Northwestern University Law Review* 107 (2012); and Scott McLemee, "Corruption, Continued," *Inside Higher Ed* (October 1, 2014). In the book under review, Teachout maintains her point that constraining corruption was central to the vision of the men who wrote the Constitution, but she does not employ the words "obsess" or "obsession" to characterize their anti-corruption convictions; *Corruption in America*, 56–80. On the Founders and corruption, see also James D. Savage, "Corruption and Virtue at the Constitutional Convention," *The Journal of Politics* 56 (February 1994): 174–86.

[13]Teachout, *Corruption in America*, 307–10. Curiously *Corruption in America* does not discuss the Constitution's provisions for the election of the president, although in her earlier article Teachout analyzed the anti-corruption intentions behind the Electoral College; see "The Anti-Corruption Principle," 367–68.

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[14]Teachout, *Corruption in America,* 62.

[15]Teachout, *Corruption in America*, 13.

[16]Teachout, *Corruption in America*, 85, 87–88, 94, 101.

[17]Teachout, *Corruption in America*, 114, 116, 117, 130.

[18]Teachout, *Corruption in America*, 148, 149, 155, 159, 169. An indispensable treatment of these subjects may be found in John T. Noonan, Jr., *Bribes* (New York: Macmillan Publishing Company, 1984), 427–620.

[19]Teachout, *Corruption in America*, 189, 199, 203.

[20]Teachout, *Corruption in America*, 209, 212.

[21]Teachout, *Corruption in America*, 232, 234, 245. Justice John Paul Stevens (joined by Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor) powerfully dissented from the majority's decision in *Citizens United* and from the majority's "crabbed" definition of corruption; Teachout, *Corruption in America*, 234, 259.

[22]Teachout, *Corruption in America*, 302–3. For Teachout's compelling critique of "the quid pro quo mistake," see 234–45.

[23]Teachout, *Corruption in America*, 256. Lessig, *Republic, Lost* elegantly describes and explains the characteristics of the contemporary political system that are summarized in this paragraph.

[24]Teachout, *Corruption in America*, 276.

[25]Teachout, *Corruption in America*, 278–80.

[26]Teachout, *Corruption in America*, 298, 304–5.

[27]Teachout, *Corruption in America*, 5.

[28]Richard Bushman, "Corruption and Power in Colonial America" in *The Development of a Revolutionary Mentality* (Honolulu: University Press of the Pacific, 2002), 62–91; Franklin quoted in Bushman, 81. See also Patricia U. Bonomi, *The Lord Cornbury Scandal: The Politics of Reputation in British America* (Chapel Hill: University of North Carolina Press, 1998), 77–98; and Richard R. Beeman, *The Varieties of Political Experience in Eighteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2004), 73, 103.

[29]Robert V. Remini, "The Era of Corruption" in *Andrew Jackson and the Course of American Freedom, 1822–1832* (New York: Harper & Row, 1981), 12–38.

[30]The historical literature on nineteenth-century political corruption and accusations of corruption is vast; a sampling of some of the more interesting and important works includes Howard Bodenhorn, "Bank Chartering and Political Corruption in Antebellum New York: Free Banking as Reform" in Edward L. Glaeser and Claudia Goldin, eds., *Corruption and Reform: Lessons from America's Economic History* (Chicago: University of Chicago Press, 2006), 231–57; Mark W. Summers, *The Plundering Generation: Corruption and the Crisis of the Union, 1849–1861* (New York: Oxford University Press, 1987); Michael F. Holt, "The Politics of Impatience: The Origins of Know Nothingism" in *Political Parties and American Political Development from the Age of Jackson to the Age of Lincoln* (Baton Rouge: Louisiana State University Press, 1992), 265–90; Michael Thomas Smith, *The Enemy Within: Fears of Corruption in the Civil War North* (Charlottesville: University of Virginia Press, 2011); and Ari Hoogenboom, *Outlawing the Spoils: A History of the Civil Service Reform Movement, 1865–1883* (Urbana: University of Illinois Press, 1961). Notable, as well, is Noonan, *Bribes*; see especially 447–563.

[31]Raymond A. Mohl, *The New* City: *Urban America in the Industrial Age, 1860–1920* (Arlington Heights, IL: Harlan Davidson, 1985), 83–137; "People's [Party] Platform of 1892" in Kirk H. Porter and Donald Bruce Johnson, eds., *National Party Platforms, 1840–1956* (Urbana: University of Illinois Press, 1956), 89; Burl Noggle, *Teapot Dome: Oil and Politics in the 1920s* (New York: W. W. Norton, 1962).

[32]Walter Lippmann, "A Theory about Corruption" in Arnold J. Heidenheimer, ed., *Political Corruption: Readings in Comparative Analysis* (New Brunswick, NJ: Transaction Books, 1970), 294.

[33]Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill: University of North Carolina Press, 1969); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975), 506–52; John M. Murrin, "Escaping Perfidious Albion: Federalism, Fear of Aristocracy, and the Democratization of Corruption in Postrevolutionary America" in Richard K. Matthews, ed., *Virtue, Corruption, and Self-Interest: Political Values in the Eighteenth Century* (Bethlehem, PA: Lehigh University Press, 1994), 103–47; Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Farrar, Straus and Giroux, 1990).

[34]*The Letters of Wyoming, To the People of the United States, on the Presidential Election, and in Favour of Andrew Jackson* (Philadelphia: S. Simpson & J. Conrad, 1824), 12, 18, 29; Watson, *Liberty and Power*, 73–95,

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132–71; Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979), 88; Thomas Brown, *Politics and Statesmanship: Essays on the American Whig Party* (New York: Columbia University Press, 1985), 29–30. Andrew Jackson goes almost unmentioned in Teachout's narrative, but in an endnote she provides an insightful two-page discussion of the Jacksonians' anti-corruption rhetoric and policies; *Corruption in America*, 337–39.

[35]On northern and southern anti-corruption passions during the 1850s, see Summers, *Plundering Generation*, 215–304; and Michael F. Holt, *The Political Crisis of the 1850s* (New York: John Wiley & Sons, 1978), 183–259. During the era of Reconstruction, corruption flourished practically everywhere in the United States, but the opponents of Reconstruction succeeded in portraying Republican-led southern governments as unusually, even uniquely, corrupt; see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (New York: Harper & Row, 1988), especially 384–90, 525–26.

[36]Richard L. McCormick, "The Discovery that Business Corrupts Politics: A Reappraisal of the Origins of Progressivism," *American Historical Review* 86 (April 1981): 247–74.

[37]This brief characterization of the political and governmental changes of the early twentieth century owes a great deal to several outstanding works of history, including Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge: Cambridge University Press, 1982); Elisabeth S. Clemens, *The People's Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890–1925* (Chicago: University of Chicago Press, 1997); Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877*–1917 (Chicago: University of Chicago Press, 1999); and Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870–1920* (New York: Oxford University Press, 2003).

[38]Lincoln Steffens, *The Autobiography of Lincoln Steffens* (New York: Harcourt, Brace and Company, 1931), 357–627; McCormick, "Discovery that Business Corrupts Politics."

[39]On the use of allegations of electoral fraud and corruption to justify measures disenfranchising blacks, see C. Vann Woodward, *Origins of the New South, 1877–1913* (Baton Rouge: Louisiana State University Press, 1951), 326–27; Woodward, *The Strange Career of Jim Crow*, Second Revised Edition (New York: Oxford University Press, 1966), 82–83; Albert D. Kirwan, *Revolt of the Rednecks: Mississippi Politics, 1876–1925* (New York: Harper & Row, 1965), 122–35; and Joel Williamson, *A Rage for Order: Black/White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1986), 157–58.

[40]Stanley I. Kutler, *The Wars of Watergate: The Last Crisis of Richard Nixon* (New York: Alfred A. Knopf, 1990), 579, 610. Kutler's penultimate chapter, titled "In the Shadow of Watergate," provides an admirably balanced account of the scandal's impacts upon politics and government; *Wars of Watergate*, 574–611.

[41]Jill Lepore, "The Crooked and the Dead," *The New Yorker* (August 25, 2014): 27.

[42]For a persuasive account of how deep corruption currently influences federal government policies in a wide range of areas, see Lessig, *Republic, Lost*, 41–225.

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